

Animadversions on the Enquiry into the
manner of creating peers

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ANIMADVERSIONS
ON THE
ENQUIRY
Into the MANNER of CREATING
PEERS.



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ANIMADVERSIONS

ON THE

ENQUIRY

Into the MANNER of CREATING

PEERS:

With some HINTS about

Pyrating in Learning;

IN A

LETTER

TO

RICHARD W--ST, Esq;



----- *Tunc hinc spoliis induit meorum
Eripiare mihi.* Virg. Æn. l. 12.



L O N D O N:

Printed for J. PEELE, at Lock's Head
in Pater-noster-row. 1724.

AC911.1724.572

ЗЕМЛЯНОДАМНА

ЛИЧНО

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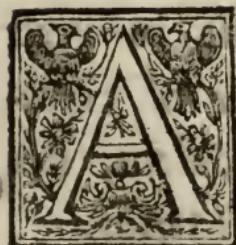
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ANIMADVERSIONS ON THE ENQUIRY Into the Manner of Creating PEERS.

SIR,



S the end of writing or reading Books, is the communicating to others, or informing our selves, of Truth, after a Person has avowed himself for an Author, as I'm well assured you have, every Reader, as it seems, has a right

A

to

to desire him to Explain, or Answer, such Objections as occur to his Performance: For, though the Persons of Authors ought to be exempt; yet surely, their Writings ever were esteem'd proper Subjects of publick

That the
remarking
the Mi-
stakes of
Books, is
justified by
the Author
of the En-
quiry's
own Ex-
ample.

Animadversion. This Liberty you have taken with Judge *Dodridge*, and, (not to mention others) with that great Oracle of the Law, the Lord Chief Justice *Coke*; even with a Note of Contempt: Therefore, you will think me justified by your own Example, if I here remark some few, of the very many things, that are in my Apprehension, amiss in your Enquiry into the manner of creating Peers; which by Accident, not long since, fell into my Hands.

Enq. p. 38. You are pleas'd to tell us, (they are your own Words) " Before that A Passage concerning the Motives of " Methods were found out, to make " Men

" Men think a long and expensive Attending
 " Attendance worth their while, the in Parlia-
 " Priviledge of Attending now and ment, that
 " then in Parliament, was not, nor wants ex-
 " could it be thought, by Men of plaining.
 " small Income, to be a sufficient
 " Equivalent, for the Burthen of
 " those other Services, that were in-
 " cident to a Tenure *per Baroniam.*"

This indeed, is a Discovery, that never was, I think, publish'd in Print. The Parliament is surely concerned to have this Expression clear'd; and all Persons, who have any right to Vote at Elections, nay, every Reader may, justly require you to tell us what those Methods are; and indeed, you seem to be engag'd for your own Sake, fully to explain this Passage, in the same manner you have publish'd it to the World; I mean in Print: For, as you are a Member of Parliament, we must

suppose you know the truth of such Things better than we without Doors do ; and, as one of the King's Council, (it being part of their Duty to assist in bringing the Authors of Libels to Justice) it is hardly to be suppos'd, you would write such a Paragraph, without *weighty* Reasons : Since otherwise, I think no Definition can be given of a Libel, that does not agree to what you have here Asserted : For it carries an Imputation on Persons and of Things, horrid to think, and dangerous to publish in more explicite Terms.

That according to the doctrine in the Enquiry, many of the Nobility have no Right to their Seats in Parliament

As the whole Parliament are interested in this, so are many of the greatest and most antient of our Nobility concern'd, and most nearly too, in another part of your Performance; for you lay it down as a Foundation, and most justly, as *Dodridge, Selden, &c.* had

had done before you, that all Barons, are either Barons by Tenure, by Writ, or by Patent. You then proceed (by Arguments long since publish'd by *Prym*, in his Plea for the House of Peers) to prove, that there is no such thing as Barons by Writ; and that all those who are vulgarly called Barons by Writ, are really Barons by Tenure. After this you tell us, which is not true, that all Baronial Services are by Statute taken away; then according to your own Positions, it necessarily follows, that there are no Barons but by Patent; and thus you declare the Lords *Abergavenny*, *Delaware*, *Peircy*, and many more, are not Peers: A bold Stroke indeed, but a notorious Error, as I shall prove hereafter.

TILL your Enquiry appear'd, since the Union, nothing has been printed
to

Enquiry
P. 38, 40.

That the name of Barons was probably used in Scotland before the Conquest. to lessen the *Scotch* Nation ; and 'tis sure, that they had less Reason to expect such ill Treatment ; I mean, have deserv'd it less from you, than any Man living : Yet, though you allow that the Name of Baron was derived by our Ancestors, from the *Normans*, or *Scotch*, rather then admit it was used in *Scotland* before the Conquest ; and so probably came to us from a Nation which is now part of our selves, you tell us (and give this for your only Reason) that

Enq. p. 23. in the *Scotch* Laws, for *Malcolm* the 2d, we are to read *Malcolm* the 3d. This is the more strange, because

Titles of Honour, p. 698. *Selden*, from whom you transcribed that Passage, never dream'd of such an Assertion : Nor is it consistent with the rules of Criticism, nor perhaps with Truth ; for we read that *William* (commonly call'd) the Conqueror, in forming Laws here, consider'd

sider'd the Laws of the *Scotch*, *Picts*, &c. Why then may we not let the old Reading subsist, and believe that Name, by which the Collective Body of our Nobility is denoted, was borrowed from our Country-Men of *North Britain*? Vide Taylor of Gavelkind. p. 60.

THE Mistakes in Law, that occur in the Enquiry, are very many. I will only mention such, as by Perusal of the Statute Book, or *Coke* on *Littleton*, might have been prevented, and will be confuted.

WE are told there, that King Enq. p. 73. *James* the Ist, parted with his Court of Wards: The Fact is quite otherwise. Look into the Reports of Cases in King *James* the First, and King *Charles* the First's Time, and you will find many Cases adjudged in that Court in these Kings Reigns; and That in the Enquiry in the time the Court of Wards was abolish'd, is mistaken.

and the Truth is, the Act did not pass till after the Restoration: Nor is there a less Mistake as to the Act it self, than the Time of Passing it;

Enq. p. 68, and 7. for we are also there told, that all

Baronial Services, of which Number the Right to sit in Parliament, you before say is one, are taken away by

That Ba-
rony by
Tenure, is
not taken
away, as
is errone-
ously al-
leged in
the Enqui-
ry. Act of Parliament. Yet, if you will read the Statute, you will find this Clause in the very Act: " Provided

" also, that neither this Act, nor
" any thing therein contained, shall
" infringe or hurt any Title of Ho-
" nour, Feodal, or other, by which
" any Person hath, or may have,
" right to sit in the Lords House of
" Parliament, as to his or their Title
" of Honour, or sitting in Parlia-
" ment, and the Priviledge belong-
" ing to them as Peers: This Act,
" or any thing therein to the con-
" trary notwithstanding."

No one point of Law is, I think, more settled and more commonly known than the Nature of Homage; and yet I believe on a Review of your Enquiry, you will allow that a great Error is there omitted on this Subject; in six several Places the doing of Homage is mentioned, in one, 'tis call'd a Ceremony, in another a Profession; and in the other four an Oath: The two first Appellations are most just, and copied out of Sir *H. Spelman*. For all that's said P. 4. of the Enquiry, where Homage is call'd a Ceremony, is taken from P. 5. of Sir *H. Spelman's* Posthumous Works. So P. 19. of the Enquiry, where Homage is called a Profession, is taken from P. 59. of the same Book, where that very Expression is used; But Sir, the calling it an Oath, is a new Notion, which I must be-

The na-
ture of
Homage is
mistaken
in the En-
quiry.

lieve to be wrong, because, by the Forms prescribed for the doing of Homage in the Statute 17 Ed. 2d. it appeares to all Persons (who

Enq. p. 4. The Ceremony and Oath of Homage and Fealty.

Page 7. Their Attendance is to be considered only as a Feudal Service, which by the Tenure of their Lands, and the Oath of Homage, &c.

Page 19. For every Tenant *per Baroniam*, did Homage to the King, by virtue of which he was obliged, whenever summon'd to Attend him. The profession of Homage did comprehend in it, &c.

Enq. p. 32. They also, by virtue of the Oath of Homage, which every Military Tenant made to his Lord, and the Oath of Homage did comprehend in it, that the Tenant was obliged to give his Lord the best Council and Advice he was able.

Ibid. Now the Tenants in Capite of the Crown, who were obliged to swear Homage, were either Tenants *per Comitatum Baroniam*, &c. or by Knights Service; and who by virtue of their Homage (as is aforesaid) were equally obliged to Attend when Summon'd to Parliament.

have

have read that Statute, 'twas no Oath; so says *Coke* on *Littleton*: Nay Lord *Coke*, in his Treatise of Copyholds, cited in the Enquiry P. 13. &c. expressly tells us, that one of the differences betwixt Fealty and Homage is, that Fealty is an Oath, and Homage is not.

What we find in the Enquiry concerning the old Lawyers, is as great an Error as any that hath been remarked with Relation to the Law it self; for we are told, that the Testimony of the Monks concerning the Signification of Words used in the Law, ought to be rejected; and that we must for the knowledge of them, consult the Lawyers and legal Proceedings of Antiquity. Now Sir, the truth is, the Monks, not only at the time you speak of, (a Citation A Mistake in the Enquiry concerning the old Lawyers.)

out of *Ingulphus*, gave you occasion to write this memorable Passage) but also for long after, were the only Lawyers; as you may see in *Dugdale's Origines Judiciales*, P. 21. and *Selden's dissertatio ad Fletam* P. 519. (which Book is cited in this Treatise) and in *Bacon*, on the Government of *England*, c. 56.

Enq. p. 11. Liege Men erroneously explain'd in the Enquiry. You are not more correct in this part of the Enquiry, which relates to the Feudal Law, than in the other, that concerns our own: For

Example, you make the words Peers, Convassal, and Liege Man, synonymous Terms, than which, nothing is less true; for a Liege Man, is one who does Homage Absolutely, and without Reserve for the like Duty to any other Lord; whereas Persons might be Peers and Convassals to the same Lord, and yet do

do their Homage to their Lords, with such reserve: This is not only the uniform Opinion of the Writers of the Feudal Law, as understood in other Countries, but is also conformable to the Usages of our own.

Notwithstanding your Pamphlet consists but of seventy four Pages, very little of it is New; and the Expressions are generally so perplexed, that it is hardly possible to discover any determined Meaning in several Paragraphs: Yet, as in the places I have Remark'd, you contradict the Statute Book, *Coke on Littleton*, and truth: So in many Instances, you contradict your self, and deny in one Place, what you assert in another. This seems incredible at first Sight, but if I mistake

That the
expressions
in the En-
quiry are
dark.

Four Ex-
amples of
Contradi-
ction in
the Enqui-
ry.

mistake not, will be clearly evinced by the following Examples.

Where the distribution made of the conquer'd Land by the *Northern* Nation, on their subduing the *Western* Provinces, of the *Roman* Empire, is treated, we are told in one Place, the Conquer'd had some Land left in their Possession, in another Place they had not.

In Relation to the Origin of Tenures, a thing very necessary to be clearly explain'd, because Barons

Enq. p. 1. The Antient Inhabitants of the Countries Conquered, not being to be trusted *with too large a share of Property*.

Page 13. The Conquerors could originally *trust none* but their own People; and the *Romans* or *Provincials*, which were synonymous Terms, were treated with the utmost Contempt, and *deprived*, not only of their *Lands*, but also of the liberty of bearing Arms.

were

were originally so by Tenure; your Positions are not to be reconciled: Since in one Place tis said, Feudal

That every Donee and his Heirs, were ob- Enq. p. 2.
liged, not *ex pacto vel condicione*, but of Common
Right, *without any express Reservation in Grant*
for that purpose, to render all Feodal Duties
and Services whatsoever.

The Services *reserv'd* upon these Grants, are Page 21.
the Foundations of Baronage.

But indeed, in those earlier Ages, they Enq. p. 18.
were so far from imagining that every Tenure
in Capite of the King, *ut de Corona*, amounted
to a Barony, and even if it did, *so far were*
they from being ambitious of that Honour, that
they apprehended nothing more, than that the
King (when any Honour escheated into his
Hands) would change the Tenure in Capite,
as of the Honour to a Tenure in Capite, as
of the Crown.

Whatever Notions are now entertain'd, of Page 19.
an Attendance in Parliament is an Honour, a
Priviledge, &c. in the earlier Ages of our
Monarchy, it was look'd upon in a quite dif-
ferent Light; *and was esteem'd to be a Service, a*
Burthen incident to the Tenure of their Lands.

Services

Services were not due by Reservation; in another, that they were: So likewise, a Seat in Parliament, as a Baron, is in more Places than one, represented as what, to use your memorable Expression; during the first and middle Ages of our Monarchy, till Methods were found out, to make a long and expensive Attendance in Parliament, worth while, was shun'd and avoided in another, as what even in those times was desired; nay, which is indeed pleasant, the lesser Barons are represented as forming wild and impracticable Schemes, to get into the House of Commons. What is further said concerning the lesser Barons is equally inconsistent; for in one Place tis said, they mixt with the Commons, and were no more heard of;

in another, that they paid Relief as Barons, and consequently must be known to be so, and be Recorded as such.

THE

And the obvious Reason, why in few Years Enq. p.33. after Hen. III. we hear no more of these unparliamentary Barons, is because those of them who had not *interest* sufficient to be summon'd to Parliament as Barons, (wisely preferring a share in the Legislature of their Country, to the empty Title of a Lord without it) chose rather to mix themselves silently with the other Commoners of their respective Counties, thereby hoping when the knowledge of their Tenure was something lost, to get into Parliament in the House of Commons.

The Consequence of which was, that the Page 36. neglected *Barones Minores* soon mingled themselves with the other Commons of their several Counties; and the Term Baron, in process of Time, came to be appropriated only to those *Majores Barones* who were constantly summon'd to Parliament, but yet *the Tenure of the neglected Barons still subsisted*.

For those Tenants, *per Baroniam*, who were Page 57. never summon'd to Parliament, as they were (as is before mentioned) entitled to all the

THE Reasoning in the Enquiry,
 (I mean what is new, and not to

Priviledge of Barons, as *e. g.* exemption from serving on Juries, &c. which were not simply incident to, and the pure Consequence attending in Parliament, as *e. g.* their Dome-sticks being in Session time, free from Arrests, &c. So likewise were they bound to the performance of all Baronial Services whatsoever, excepting only, that of Attendance in Parliament, *ibid.* Now the payment of this *Relief*, was common to all the Tenants *per Baroniam*, (who were consequently, all equally Barons within the Charter of *Hen. III.*) without distinction, whether they were summon'd to Parliament or not.

Enq. p. 58. I believe I need not multiply Precedents to prove this Point, since the Reader will easily believe, that though the King was willing enough not to be troubled with more of them in Parliament; them such, as he should think fit particularly to Summons by Writ, that yet he was not inclined to release to those Tenants *per Baroniam* whom he did not Summon, any part of their Baronial Services, nor (much less) to relinquish any Method which the Crown was possessed of, for raising Money from them.

be found in Books printed, before that Treatise appear'd) is always inconclusive: How fair, I leave to be determined on the following Instances.

IN order to prove, that all Tenants in Capite by Military Service, were not Barons, the two Cases relied on, are those of *Thomas Furnival*, and the Abbot of *Leicester*. The first of these indeed in the Record, does deny his being a Baron; but the truly learned Mr. *Madox*, who first published this Record in the self same Page, where he cites it, gives good Reasons to prove he was a Baron; and methinks 'twas a piece of Justice due to the Reader, to Transcribe them, as well as the Record from that excellent Author.

The Reasoning in
the Enquiry is al-
ways bad.

One Ex-
ample of
this.

A Second. THE Citation of, and Reasoning on, the case of the Abbot of *Leicester*, is yet more liable to Censure. This Record was long since published in Page 151. of *Prym's Plea for the House of Lords*; and if fairly stated, will appear a strong Argument, to prove the direct contrary, from that 'tis produced to maintain, and is inferred from it. The truth is, the Abbot insists in the Record, on being discharged his Attendance in Parliament, because his Abby was founded by *Mountford, Earl of Leicester*, which is an Admission by Implication; that had it been founded by any of our Kings, he would have been obliged to attend as Tenant in Chief.

That the Enquiry was wrote to be denied, that your Enquiry for to help the Peerage was wrote to promote the memorable Bill.

rable Bill of Peers, which you mentioned in Page seventy two, as depending when this Elaborate Treatise was published for that Purpose. 'Tis asserted, that most, if not all the Earls, and all the Barons without Exception, were, And there-
in the Cre-
ation of
Peers in
Parliament
is asserted. till very lately, created by Parliament; and two Things are offer'd as sufficient Proof of this Position, that are really none, and which is indeed most extraordinary, may be shewn to be none from two Books, cited in the Enquiry, and by the Statute Book.

FIRST, 'Tis insisted that this Clause *de data predict. Authoritate Parliamenti,* Enq. p. 64.
One Proof
that's of-
fered in
the Enqui-
ry to sup-
port this
Affection
confuted
out of
Selden. proves that the Patent passed in Parliament. To confute this Error, I'll only transcribe a Passage out of *Selden's Titles of Honour* Page six hundred and thirty two; who mentioning the Viscount Beumont's Patent, writes thus.

" The

" The Date is at *Westminster*, 12
 " *Martii*, in the 23d Year of the
 " King; and the Warrant is ex-
 " pressed by, *per breve de privato*
 " *sigillo, & de data predicta Author-*
 " *itate Parliamenti*; which last
 " Words, diverse Patents (of that
 " Age and of some that follow)
 " have in the Expressions of their
 " Warrants, by Reason of the
 " Statute of 18 *Henry VI.* cap. 1.
 " by which it was enacted, that
 " Letters Patents should be dated
 " the same Day, wherein the War-
 " rant for them is received; as to
 " this Day, from that Time and
 " Act, the Law hath continued.

THE other after an Enumeration
 - The second Proof of several Creations is produced, P.
 confuted out of 70. " In this Dogmatical Manner,
 I.d. Coke. " they are all passed *per breve de*
 " *privato Sigillo, & de Authoritate*
 Par-

"Parliamenti; and consequently, (so
 "the Enquiry goes on") had the
 force of Acts of Parliament: I de-
 ny the Consequence, and might
 now refer for the fifth Time to the
 Statute Book; but without going
 thither, this may be confuted by
 reading the Prince's Case, which is
 several times cited in the Enquiry,
 and might therefore have been sup-
 posed to have been well studied
 and understood. In that Case we
 read as follows. "Et quando ex-
 Enq.p. 18.
 "ituræ sunt sub billa signata, &
 "sub sigillo etiam privato, tunc pri-
 "vatum . sigillum manet Domino
 "Cancellario, & billa signata ma-
 "net Clericis signaturæ, & ex hac
 "allatum est Domino privati si-
 "gilli extractum ad faciendum bre-
 "ve de privato sigillo: & tunc
 "litere patentes subscribuntur, per
 "breve de privato sigillo; & si hac
 " verba

" verba (scilicet Authoritate Parlia-
 " menti) apponantur tunc exeunt
 " secundum statutum de Anno 27.
 " Hen. VIII. C. 11.

Enq. p. 73. I own my self Sir, surprized be-
 That the yond Expression, to find you tell
 Enquiry, tho the " us, that you have endeavour'd to
 Author fays, was present the Reader as fully as
 all he was able to do, " you was able, with a View of
 was very imperfect. " the Constitution, so far as it re-
 " lates to the Peerage." How Sir,
 is this Treatise the Produce of your
 utmost Endeavours? is it all you was
 able to do? I am loath to believe
 so, because I think but meanly of
 it; and yet when you tell us it is,
 I cannot well doubt the truth of
 what you say, and can best judge
 of: 'Twould take up a Volume
 Sir, to supply all the Defects of
 the Enquiry; this, tho' I am
 not inclined at present to do, yet

I will give you a Specimen of its Imperfections, even in the supporting the most material Position in the whole Book, *viz.* that Peers were created in Parliament, and the rather, because I have confuted the only two Arguments you produced to maintain this Assertion; and what I shall offer on that Subject, has not been to the best of my knowledge hitherto taken notice of.

To make good this Assertion,
some Reasons are offered to shew the Creation of Peers in Parliament

ALL our old Acts of Parliament are made in the Form of Charters, the Consent of the Peers was testified under the Clause of *hiis Testibus*, tho' the whole Baronage consented, yet 'twas usual only for some, and not all their Names to be inserted under this Clause; and as it seems no determined Number were used. This Manner of Subscribing Grants continued till Richard the First, *Madox's Dissertation before the Formula*.

^{1 Inst. 7 a.}

^{2 Inst. 77.} the 1st. King *John* and *Richard II*'s
^{& 78.} Time. For the Learned differ as to
 the Time, then the *Teste meipso*
 was introduced, at first only in Pre-
 cepts or Writs, after in more im-
 portant Cases, and since *Henry* the
*VIII*th's Days, has prevailed in all

<sup>8 Coke, the Princes
Cafe.</sup> but Patents for making Peers; the
^{Sel. Tit. of H. p. 62⁶.} Consequence that may be drawn
^{1 Inst. 7 a.} from these Truths, is so obvious,

that it need not be deduced here
 at large, but it may be observ-
 ed that all the Books whence this Ar-
 gument is collected from, are cited
 in the Enquiry.

<sup>The 2d.
Reason.</sup> L O R D *Coke*, in the Report of
 the Lord *Abergavenny's* Cafe, which
 is cited in the Enquiry, mentions a
 Provision of *H. III*d. that none should
 come to Parliament but such as had
 Writs sent them; therefore by this
 Law no Peers could sit in Parliament
 but

but those whom the King thought fit; that the Writ or Patent of one King could not bind his Successor, and divest him of a Right given by Parliament, is clear; therefore it seems to follow, that nothing but an Act of Parliament could entitle a Person and his Heirs to a Seat in Parliament. But let me not be understood to assert this; for I only observe, that this, as it seems, is the Consequence of admitting that Provision of H. 3. for an Act of Parliament, as is done, I think, in the Enquiry: How rightly is a Question, I cannot now stay to discuss.

IT seems very strange that no Notice is taken of what is to be found in Sir *William Jones's* Reports, (a Book every Person who deserves the Name of a Lawyer has read) concerning the Parliamentary Creation of Peers,

D 2 which

Page 104.
Further Observations on the same Subject.

which is very material, and could not be mention'd, as the other Passages, out of the Law-Books you have cited on this Subject, were long ago by *Doderidge* or *Selden*, that very learned Judge's Reports being published since these Authors wrote: Had you also, as to this Point, looked into the Customs of other Nations, that descended from our *German* Ancestors, which you must allow was proper, because you have done so on some much less important Points, you would have found Things very material in *Madox*'s History of the Exchequer, p. 18. *Hottoman*'s *Franco Gallia*, c. 14. *Mabilion de re diplomatica*, 157. *Selden*'s *Titles of Honour*, 293, &c.

What Pla-
giarism is.

To obtrude the Thoughts and Discoveries of others on a Reader as new, and ones own, is, you know,

know, Sir, called Plagiarism; the Ridicule of this Vice is set in so clear a Light by *Horace*, that I am ^{That 'tis} perswaded you will forgive me transcribing that Passage.

Quid mihi Celsus agit, monitus? mul-
tumque monendus,
Privatas ut queret opes, & tangere
vitet
Scripta, palatinus quæcunque recepit
Apollo
Ne si forte suas repetitum venerit
Olime
Grex Avium plumas, moveat cornicula
Risum
Furtivis nudata Coloribus.

Give me leave to add, Sir, that this Vice seems to be a sort of Injustice; for the self-same Abilities and Industry that enables Persons deservedly to acquire a Reputation among the Learned, had they been applied to the raising an Estate, would have render'd And per-
haps in-
consistent
with the
Rules of
Justice,

render'd the same Persons as conspicuous by their Acquisitions of Money, as they are now for their Knowledge; and when Men have spent their Time, Estates, (and which nothing can repair or compensate) wasted their Health in making Discoveries of Truths beneficial to Mankind; *for Knowledge that is of no Use, is not Learning, and merits no Respect*; is an Attempt to deprive them of the Reputation they justly deserve, and surely receive, by endeavouring to put their Discoveries in Learning on the World as their own, agreeable to the Rules of Justice? I fear this has been but too often practis'd by Persons who buy MSS. and we know who buys them

The MSS.
are NOW
bought for
this pur-
pose.

NOW for this vile and detestable Purpose; nor is it without Example as to printed Books, after the Death of the Authors: But to do so by Books

Books whilst the Authors are living,
is beyond Precedent ; if your En-
quiry is not one, such Practice is
injurious to the Authors, and also a
gross Affront to the Readers ; for it
supposes they will not discover the
Cheat intended to be put on them,
because Thefts of no kind are com-
mitted without Hopes of concealing
them : But I need not enlarge on
the Greatness of an Offence, which
no one, if they practis'd it, ever yet
was abandon'd enough to defend :
Tho' I would not, Sir, be understood
to accuse you of Plagiarism ; yet as
I'm laying before you my Thoughts
on your Enquiry, I cannot omit
mentioning the Grounds there is for
such a Suspicion ; if you are culpa-
ble, I shall be sorry any Gentleman,
and in particular, that a Professor of
the Law, should be guilty of such a
thing ; but I shall not be sorry to
be

'Tis be-
yond Ex-
ample to
steal out of
printed
Books
whilst the
Authors
are Living.

be instrumental in the making it publick and notorious, for I think it the Duty of every honest Man to discover Truth, and of every Lover of Learning to detect and expose a Practice that tends to its Discouragement; if, on the contrary, you are innocent, 'twill be a singular Pleasure to me, to see you really clear your self of an Imputation, which every one of your Readers, so obvious are many causes of Suspicion, must cast on

Tho' there
be much
cause to
suspect the
Author of
the Enqui-
ry of Pla-
giarism,
'tis easy for
him to
manifest
the truth,
and how.

you. Nor is it Sir, difficult to be done, at least as to your numerous Citations of Records; for 'tis known where the Record Office is kept, and in whose Custody they are; and so many as you have cited, could not be collected without reading an infinite Number of others, which must take up a great deal of time; and a Person of your Figure, could not be there *incognito*: Therefore, probably, by

by many, and most certainly by the Record-Keeper you may prove, and all Persons by asking may know, whether you have been such a diligent and continual Searcher of these venerable Remains of Antiquity, as the pompous Appearance of Quotations from them would make the Reader imagine.

THO' it is well understood that when an Author cites a Record, and refers to the Roll, he assumes to himself the Merit of having first produced and perused the Record; however lest, as it seems, the Reader might doubt it, you have in a particular Manner laid Claim to this Honour, by citing some few Records out of printed Books, which is affirming that you first discovered the rest; yet they were all, except three, long before your Enquiry appeared published to the World in

That all
the Re-
cords cited
in the En-
quiry were
published
long be-
fore.

In what Books they are to be found.

Books you your self have cited in the Enquiry, and one of those three is to be found in *Pryn's Plea for the House of Lords*; a Book you once referr'd to, and often transcribe in your Treatise on Bills of Attainder, and the other two I've met with in the Course of my Studies, tho' I cannot now remember in what Book.

THE Records mention'd in the Enquiry from the 58th Page to the End, may be seen under the proper Titles in *Dugdale's Baronage*, and many of them in *Selden's Titles of Honour*: That the others are in other Books, appears by the following Scheme, where the first Colume contains the Pages and all the Citations of Records that are in the Enquiry, from the Beginning to the 58th Page; the second, the Names of the Authors, Books, and Pages, where the self-same Records had been published long ago.

EN-

ENQUIRY.

Pag.

5. Mag. Rot. 10 Jea } Madox's History of the
Re Rot. 11 b Dorset & } Exchequer, Pag. 332.
Somerset. } Col. 1.

8. M. 6 Dor. - - - - > Brady of Bur. p. 28, 29.
Rot. Parliam. n 6.
Rot. Par. p. 1 m 22. > Brady of Burroughs, p. 33

9. Rot. claus. 35. E 3. } Dugdale's Summons to
m 36 dorso. } Parliam. p. 263, 265.

10. Rot. clau. 24. Ed. 1. }
m 4. dorso. This Re- } Brady of Bur. p. 33. and
ference is falsely tran- } scribed, it is 23 Ed. }
1. clauso in dorso } Dugdale's Sum. p. 10.
10 m 3.

The Case betwixt the } Madox's History of the
Kings of Castile and } Exchequer, p. 13.
Navar. } col. 1.

15. Mag. Rot. 5. Steph. } Madox's History of the
13 a Berchesara. } Excheq. p. 347. c. 1.

16. Mag. Rot. 5. Steph. }
Rot. 1 b Not. & Derb. } Idem. p. 341. col. 1.
ibid. Rot. 2 a. ibid. } and 2.
Rot. 12 a.

ENQUIRY.

Pag.

17. *Pas fines, &c.* 9 Ed. }
 2 Rot. 113 b. 10. } Idem. p. 434. col. 2.
 19. *Rot. Par.* 27 Ed. 3.
 p. 3 m 3.
 32. *Rot. claus.* 23. E. 1. }
 m 9. dorso. } Dugdale's *Summons to
 Parliament*, p. 8.
 37. *Rot. claus.* 18. Ed. 2. }
 dor. m 21. } Idem. Page 131.
 idem. 1 Ed. 3. p. 1. }
 dorſ. m 2. } Idem. Page 139.
 idem. 16 Ed. 3. p. 2. }
 dorſ. m 38. } Idem. Page 219.
Rot. claus. 45. Ed. 3.
 dorſ. m 3. This Re- }
 ference is ill copied,
 and should be thus, }
 44 Ed. 3. *claus. in* } Idem. Page 278.
 dorſ. m 1.
 39. *Rot. claus.* 25 Ed. 1. } Idem. Page 19.
Rot. clauso 33 Ed. 1. }
 9 & 10. } Idem. Page 47, 49.
Rot. clauso 1 Ed. 2. }
 m 11. } Idem. Page 59.

ENQUIRY.

Pag.

41. *Rot. Parl.* 26 Ed. 3. }
 p. 2. m 22. Here the }
 Reference is again > *Seld. Tit. of Hon.* p. 607.
 false, and should be }
 Part 1. and not P 2. }

42. *Rot. claus.* 18 Ed. 2. }
 dorf. 5. } Idem. Ibid.

43. *Rot. Parl.* 20 Ric. 2. }
 n 8. } *Pryn's Plea for the House
of Peers*, p. 23.

46. *Rot. claus.* 28 Ed. 1. }
 dorf. 3. } *Dugdale's Summons to
Parliament*, p. 29.

52. *Rot. ch.* 1. R. 2. }
 n. 3 1. This is a false }
 Reference, it should } *Selden's Titles of Honour*,
 be n 3. } p. 548.

57. *Mem. in Scac.* 40. }
 H. 3. *Rot. 12 b.* } *Madox's History of the
Excheq.* p. 218. c. 2.

THO' the Quotations out of print-
 ed Books are numerous, yet I find
 few, very few excepted ; they might
 also be had without reading, or so
 That the
 Citations
 out of
 Printed
 Books
 might be
 made
 without
 seeing
 them.
 much

much as seeing the Books themselves, because they are to be found in other Books cited in the Enquiry: To shew this in every particular would be tedious and unnecessary, I shall therefore at present content my self with giving some Examples, the rest shall be forth coming when ever you please to deny the having transcribed them from the Books where they were to be found.

ENQUIRY.

Pag.

- 3. *Bracton*, lib. 2. c. 34. > *Seld. Tit. of Hon.* p. 500.
- 21. Idem. l. 1. c. 16. > *Spellman's Rem.* p. 44.
- 4. *Glanvile*, lib. 7. c. 3. } *Hales History of the Common Law*, p. 226,
} 231.
- 57. Idem. > *Seld. Tit. of Hon.* p. 576.
- 6. and 22. *Lex Will.* } *Spellman's Remains*, p.
Conques. l. 55. } 44.
- 12. *Lex H.* 1. > *Spellman's Rem.* p. 58.
- 33. *Dictum de Kenel-* } *Pryn's Plea for the House
worth.* } of Peers, p. 260.

ENQUIRY.

Pag.

28. 22 Ed. 3. fol. 18.	} Seld. Tit. of Hon. p. 592. and Pryn's Preface to his Plea for the House of Lords, p. 7.
48. H. 1. p. 6.	
29. 1 Institute, fol. 9. b.	} Pryn's Plea for the House of Peers, Pref. p. 4.
4 Institute, p. 44.	
26. Sir Henry Brom-	} Selden's Titles of Honour, p. 616.
fleet's Case.	
The Prince's Case.	> Seld. Tit. of Hon. p. 496.
20. Matthew Paris.	> Seld. Tit. of Hon. p. 578.
29. Idem.	> Idem. p. 592.
32. Idem.	> Idem. Ibid.
43. Idem.	} Pryn's plea for the House of Peers, p. 22.
22. Hovenden.	} Seld. Tit. of Hon. p. 580. and in Hales History of the Common Law, p. 104.
4. Feud. Tit. 1.	} Spellman's Remains, p. 4.
11. Cujacius.	} Madox's History of the Exchequer, p. 3.

Now

N o w Sir, the Reasons that may be offer'd to induce a Belief of your having taken these Citations out of Books that are in the last Column of the foregoing Scheme are these.

The first Reason there is to suspect these Citations were taken out of other Books. **F I R S T,** You cite nothing out of the Authors but what had been before cited by others, and it seems strange if you really read the Books you cited, you should discover nothing new in them.

The second Reason. **S E C O N D L Y,** You cite the Authors and Books contain'd in the first Column by the self-same Reference that they are refer'd to by the Books in which they were before cited, and are contained in the second. Thus for the Purpose, the Citation out of *Matthew Paris*, which occurs in *Selden*, and by him is odly refer'd to by the

the Year, and not the Page, is in like manner refer'd to by you.

LASTLY, Sir, it appears by The third Reason. Vide p. 6, 7, &c. what is said before, that you have committed Errors, and omitted Things very material, which probably you would never have done, had you read all the Authors you have quoted; because some of them might be corrected, and several of these supplied by what you would have found in reading the Books you cite.

WHAT has been observ'd on the Authorities cited in the Enquiry is true of almost the whole Treatise; for there is not one, no not one Position in it, that is not erroneous, or to be found in other Authors whose Names are oftner suppress'd than mention'd; thus all that is said of the Origin of the Feudal Law, and of Tenures, is no

How more than an Abridgment of what
 much of what is in Sir *Henry Spelman* had wrote in his
 the Enquiry is to be Remains : a Book at the time the En-
 found in Sir H. Spelman. quiry appear'd exceeding scarce, only
 man. here and there a few Interpollations
 are added out of the first and 29th
 Titles of *Basnages's* Commentaries on
 the Customary of *Normandy*; such
 are the Citations out of *Ælius Lam-*
prius, and *Dudo St. Quintinus*, p. 2.
 and 21. of the Enquiry, and to be
 found in *Basnage*, p. 159. and 3.
 you proceed p. 15. to explain the
 notion of Tenant in Capite, which
 is truly tho' indistinctly stated, but
 I find it was done long ago by the
 most learned Mr. *Madox* in his Histo-
 ry of the Exchequer, p. 432. &c. to
 the same Purpose that you have ex-
 press'd your self in the Enquiry, with
 a Modesty and Perspicuity peculiar
 to that excellent Person, who also
 there cites the same Places of Sir *Henry*
Spelman

That the
 Exposition
 of Tenure
 in Chief is
 taken from
 Mr. Ma-
 dox.

Spelman and his own *Formulare Anglicanum* that you do. The whole Passages are too long to be inserted here at large; nor indeed is it necessary, since the transcribing a few Lines will shew how precisely you express what he had long before discover'd, and communicated to the World.

MADOX's *History of the Exchequer*, pag. 432. ENQUIRY, pag. 15.

“ Men seem to have
“ been led into their
“ confused Way of
“ speaking upon this
“ Subject, by suppos-
“ ing Tenures *in Ca-*
“ *pite* to have been
“ a distinct Kind of
“ Tenure, in like man-
“ ner as Tenant by
“ Knights Service, So-
“ cage, and others
“ were;

“ But what has con-
“ fused some modern
“ Writers still more, is
“ a Notion they have
“ entertain'd, that a
“ Tenant *in Capite* was
“ a distinct Kind of
“ Tenure, or rather Ser-
“ vice different from
“ all others, as Knights
“ Service is from So-
“ cage, &c. When as
“ it

" it is a Circumstance " were ; which Sup-
 " only, that may be " position is fallacious
 " true of all other Ser- " and untrue : For Te-
 " vices whatsoever ; for, " nure *in Capite* was so
 " as the Term implies " far from being a di-
 " nothing but an im- " stinct Sort of Te-
 " mediate Tenancy, " nure by it self, that
 " without any Mesne " it might be predi-
 " between the Lord " cated of the several
 " of the Fief and " other Tenures ; that
 " the Vassal, who " is to say, a Man
 " was seized of the " might hold of the
 " Lands, it was ap- " King *in Capite*, either
 " plicable to a Te- " by Barony, or by
 " nure from any Lord " Knights Service, or
 " whatsoever, and by " by Serjanty, or by
 " any Service what- " Socage, or by Fee-
 " soever. " Farm.

Enq. p. 25. S O M E few Pages after when you
 What is said of Un-treat of the Unalienableness of the
 alienable-
 ness of the Crown Lands, you usher in this
 Crown-
 Lands is co Truth with a pompous Appearance
 pied from Selden. of Authorities, and as precisely ex-
 pres

press the Sense of *Selden*, as in the former Passage you did that of Mr. *Madox*, and all the Citations you make to prove this are also in *Selden*, who gives us many Authorities to shew, that like Law prevail'd in other Countries; therefore your Readers will certainly, as you say you hope they will, believe it was easy to prove, that, for what is easier than to copy a few Lines out of a printed Book, from which that whole Page had been taken, and was consequently then open before you.

ALL that is said in the Remainder of your Book concerning Barons that is not Erroneous, is to be found in *Selden's Titles of Honours*, except three Notions, *viz.* That Barons by Writ were really Barons by Tenure, that Patents for Peerages were passed in Parliament, and that those who had

Disserta-
tio ad fle-
tam, p.

The rest of
the Book
from Sel-
den and
Pryn.

had Writs and were not Barons by Tenure, were only Assistants to the House of Peers ; and these were long since publish'd by *Pryn*, in his Plea for the House of Peers, p. 4.
147, 157, &c.

I N these Instances the Thoughts of those Great Men are express'd in your Enquiry ; but in some Places you almost use their Words, of which not to multiply Examples, I'll offer but one, nor need I go beyond the 2d p. of your Enquiry to find it, and that too out of Sir *Henry Spelman's* Remains, publish'd by the Care of the most Learned the present Bishop of *London*, which Book you've never once cited, though you frequently name the Author in your Enquiry.

Some-times the Words, as well as the Sense, of others are copied into the Enq.

An Example.

Sir

Sir H. Spelman's Re-
mains, pag. 57.

ENQUIRY, pag. 2.

----- Provinces to Provinces were
Dukes, Counties to granted to Dukes,
Earls, Castles and Sub-divisions of them,
Signories unto Ba- or Counties, to Earls,
rons: Rendring unto Castles and Signories
(for him, not *ex*
pacto vel condicte, among others to this
that was but *cautela* Condition of serving
superabundans) but of in the Wars with a
common Right, and prescribed Number of
by the Law of Na- Men.

tions; (for so I may These Fiefs, as they
term the Feodal - Law were afterwards cal-
then to be in our led, were originally at
Western Orb) all feo- most but for Term
dal Duties and Ser- of Life; and when,
vices, due from the in Process of Time,
Donees and their they became Heredi-
Heirs, upon every tary, this Condition
Gift, Grant, and A- of Military Service
lienation, though no was so annexed to
Word the

the Possession of Land, Word. were spoken
that every Donee and of them.

his Heirs were oblig-
ed, not *ex pacto vel*
condicto, but of com-
mon Right, without
any express Reservati-
on in the Grant for
that Purpose, to ren-
der all Feodal Duties
and Services whatsoe-
ver.

ON a Review of this Letter,
Sir, the Errors in general here re-
mark'd, seem to me to be of so ex-
traordinary a Nature, and those that
relate to the Law in particular so very
gross, that I could not believe it pos-
sible for such to be committed by any
one, much less by one at the Bar,
and in a distinguish'd Post ; this

Doubt and the Love of Truth and Justice determin'd me to enquire whether there were more Editions of your Pamphlet than one, being told there was two, I immediately procured the second, supposing at least some of these Errors were in that corrected, but on Examination I find no Amendment, in some future I hope you will correct all the Faults of the former: I say all, because, for Brevity's sake, I have omitted many of the same Nature with those, that are here remark'd, being inclined to determine the Length of this Letter, rather from the Limits such Writings ought to be comprised in, than the Vastness of my Subject. If you doubt of my having omitted many, on this Motive, you shall have them pointed out hereafter, with some Remarks on your

The Faults
here ob-
served are
in both the
Editions of
the Enq.

Many o-
ther Errors
of the En-
quiry o-
mitted;

Which
may here-
after be a-
nimadver-
ted on.

Treatise concerning Bills of At-
tainder.

I am,

SIR,

Yours, &c.

Inner - Temple,
Jan. 1. 1723,-4.



*Note, The First Editions of Mabilion
De Re Diplomatica, Craig De Feu-
dis, and Spelman's Remains, are re-
ferr'd to in this Letter.*

Animadversions on the Enquiry into the
manner of creating peers